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STATUTORY INSTRUMENTS

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**1978 No. 1045**

**Matrimonial Causes (Northern Ireland) Order 1978**

**PART III**

**FINANCIAL RELIEF FOR PARTIES TO  
MARRIAGE AND CHILDREN OF FAMILY**

*Maintenance agreements*

**Alteration of agreements by the High Court, or by a county court, after death of one party**

**38.**—(1) Where a maintenance agreement within the meaning of Article 36 provides for the continuation of payments under the agreement after the death of one of the parties and that party dies domiciled in Northern Ireland, the surviving party or the personal representatives of the deceased party may, subject to paragraphs (2) and (3), apply to the High Court or a county court for an order under Article 37 <sup>F1</sup>....

(2) An application under this Article shall not, except with the permission of the High Court or a county court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.

(3) A county court shall have jurisdiction by virtue of this Article only where it is shown to the satisfaction of the court that, at the date of the death of the deceased, the property included in his net estate (that is to say, all property of which he had power to dispose by his will, otherwise than by virtue of a special power of appointment, less the amount of his funeral, testamentary and administration expenses, debts and liabilities, including any capital transfer tax payable out of his estate on his death) did not exceed [<sup>F2</sup> £15,000] in value.

(4) If a maintenance agreement is altered by a court on an application made in pursuance of paragraph (1), the like consequences shall ensue as if the alteration had been made immediately before the death by agreement between the parties and for valuable consideration.

(5) The provisions of this Article shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the period of six months referred to in paragraph (2) on the ground that they ought to have taken into account the possibility that a court might permit an application by virtue of this Article to be made by the surviving party after that period; but this paragraph shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this Article.

(6) Article 33(9) shall apply for the purposes of paragraph (2) as it applies for the purposes of paragraph (6) of Article 33.

**F1** Words in art. 38(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 76(4), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F2** 1979 NI 8

**Changes to legislation:**

There are currently no known outstanding effects for the Matrimonial Causes (Northern Ireland) Order 1978, Section 38.